

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 14918 of 2004

Between:

1. Prudential Co-operative Urban Bank Ltd., Employees Union, (Regd. No. A-219), Secunderabad rep by its President K.P. Bheemsen S/o. P.B. Kalgikar, Aged 52 years.
2. Prudential Co-operative Urban Bank and Staff Association (Regd. No. B-1167), rep by its Secretary, B. Rakesh Kumar, S/o. Late Beeriah, Aged 40 years.

...PETITIONERS

AND

1. The Prudential Cooperative Bank Ltd. 8-1-381, Rashtrapati Road, Secunderabad, rep. By its Chairman.
2. The Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate writ, Direction or Directions declaring the action of the Respondent in issuing Circular No. 35/04 dated 26-7-2004 imposing Wage-cut on the Officers of the Bank as arbitrary, unreasonable and unconstitutional and to issue a consequential direction to the first Respondent bank not to effect any Wage-cut to the Officers of the Bank in a unilateral manner and to pass such other order or orders as this Court deems fit and proper.

Counsel for the Petitioner: Mr.V.SRINIVAS

Counsel for Respondent No.1: Mr.S.ASHOK ANAND KUMAR

Counsel for Respondent No.2: GP FOR COOPERATION

The Court at the admission stage made the following:

ORDER:

1. The employees union and the staff association of the first respondent bank filed this writ petition for issue of a writ of mandamus by declaring that the action of the first respondent in issuing Circular No.35/2004 dated 26-7-2004 imposing wage cut on the officers of the bank as arbitrary, unreasonable and unconstitutional and to issue a consequential direction to the respondents not to effect any wage cut to the officers of the bank in a unilateral manner.
2. The petitioners are representing the employees and officers of the first respondent bank. The first respondent bank is a cooperative bank incorporated under the provisions of the A.P. Cooperative Societies Act, 1964 (for short 'the 1964 Act') and later converted into a mutually aided cooperative society under the provisions of the A.P. Mutually Aided Cooperative Societies Act, 1995 (for short 'the 1995 Act'). The petitioners stated that the Board of Directors of the bank mismanaged the affairs leading to severe losses and liquidity of the bank. The Board of Directors failed to maintain the SLR, CRR and other statutory reserve funds required to be maintained under various statutes. Several borrowers committed defaults in repaying the loan amounts leading to liquidity of the bank. Due to liquidity of the bank, the Reserve Bank of India through the proceedings dated 21-3-2003 imposed a moratorium by invoking Section 35-A and Section 56 of the Regulation Act, 1949. Various measures have been initiated and several restrictions have been imposed by the Reserve Bank on the functioning of the first respondent bank. The bank was

directed to incur only the necessary expenditure like salaries of employees, electricity bills, printing and stationery etc., and those orders are still in force. The Commissioner, Cooperation passed an order on 1-5-2003 in exercise of the powers under Section 36-A of the 1995 Act read with Section 115-B (iii) of the 1964 Act superseding the elected board of the bank and appointing a fresh committee to manage the bank, which is contrary to law. The petitioners further contend that the first respondent bank has already stopped payment of annual increments and other allowances since last year and further decided to impose a wage cut @ 33.33% for junior officers, 35% for senior officers and 40% for the officers in the cadre of Assistant General Managers and accordingly issued proceedings on 26-7-2004. The petitioners also contend that the proceedings dated 26-7-2004 imposing wage cut is totally arbitrary, unreasonable and violative of Article 16 of the Constitution of India. The respondents unilaterally imposed a wage cut to the officers, which would be very harsh to them and against the principles of natural justice. The impugned direction would leave hardly 10 to 15% of the monthly salary in the hands of the officers after various deductions on account of the loans and advances taken by them. The impugned action of wage cut is contrary to the directions of the Reserve Bank of India. The petitioners therefore approached this Court seeking the relief as mentioned above.

3. The first respondent filed a counter with the following averments in brief:
4. The writ petition against the first respondent bank is not maintainable as it is not a State or an authority under Article 12 of the Constitution of India. The erstwhile directors committed various irregularities and illegalities and they were noticed by the Reserve Bank of India. They failed to maintain SLR, CRR and other statutory reserve funds expected to be maintained under various enactments. The accumulated losses of the bank mounted to Rupees 182 crores. The bank was unable to pay the legal dues to various depositors. The Reserve Bank of India therefore issued various directives through the proceedings dated 21-3-

2003. The directives imposed by the RBI hampered the normal banking activity of the first respondent bank. The RBI directed the State Government to take action for the supercession of the Board of Directors in the public interest. The Government of Andhra Pradesh invoked its powers under Section 36-A of the 1995 Act read with Section 115-B (iii) of the 1964 Act and superceded the erstwhile Board of Directors and appointed the person-in-charge committee, therefore, the person-in-charge committee of the Government of Andhra Pradesh is perfectly valid and legal. The second respondent through the proceedings dated 25-3-2003 appointed an IAS Officer as a Special Officer/Administrator. As per the direction of the Government of Andhra Pradesh, four persons were appointed as additional members of the managing committee. The first respondent implemented certain measures to reduce the administrative expenses viz., 1) seven branches have been closed down, 2) number of telephones have been reduced, 3) vehicles provided to the officers have been withdrawn, 4) A/Cs. have been shut down and payment of annual increments have been stopped. The first respondent introduced one time settlement schemes on two occasions, made rigorous efforts for recovery of overdues of the erring borrowers. The Reserve Bank of India and the Government of Andhra Pradesh suggested reducing the existing strength of employees due to the reduction of the business of the bank. The implementation of the monitoring committee of the second respondent in a meeting held on 12-7-2004 in the chambers of the first respondent suggested reduction of staff expenses and accordingly on 26-7-2004, the Chairman and Person-in-Charge Committee passed a resolution inflicting the wage reduction and the said resolution was implemented for the wages earned by the employees for the month of July, 2004. The petitioners did not challenge the resolution passed by the Chairman and Person-in-Charge Committee imposing the wage cut and they challenged only the notice issued to them, therefore, the writ petition is liable to be dismissed as infructuous. The circular issued by the RBI imposing directives did not forbid the first respondent bank from imposing the wage cut. The writ petition is therefore liable to be dismissed.

5. The second respondent filed a counter-affidavit with the following contentions in brief:
6. The first respondent does not come under the definition of the “State”, therefore, the writ jurisdiction does not lie against the first respondent bank. The petitioner has to avail alternative remedy under the Shops and Establishments Act before approaching this Court. The wage cut imposed by the first respondent bank is in pursuance of the directives of the Reserve Bank of India to reduce the establishment charges as a measure to revive the bank. Due to liquidity of the bank the RBI issued directions to restrict the operation of the bank under the Banking Regulation Act and directed to recover the loans intensively to revive the bank by achieving the liquidity. The RBI advised the State Government to reduce expenditure and to improve the recovery of the bank. The bank has 362 employees and 20 branches leading to an expenditure of Rs.7.08 crores per annum. As per the directions of the RBI under Section 35-A, the Bank is not transacting any business except the recovery of the loans; as a result the amount recovered from the loanees is being spent for the salaries of the employees and other establishment charges. In pursuance of the advice of the RBI to reduce the expenditure, seven branches of the bank were closed and by taking several other measures, the expenditure is reduced to Rs.5.88 crores. The employees have to make a sacrifice of reduction of salary in the interest of the depositors. The loans and advances taken by most of the employees and officers is only to secure some assets, therefore, the management is not responsible for huge recovery being affected from the salaries of the respective employees. The imposition of wage cut is only on account of financial emergency and not on account of imposition of any punishment as the wage cut is one of the measures to protect of the depositors. The writ petition is liable to be dismissed.
7. In view of the contention of the petitioners that the wage cut was unilaterally imposed, both parties were directed to have negotiations regarding the extent of the wage cut that is agreeable to both parties by

keeping in view the undisputed factum of the financial crisis of the bank. Subsequent to the deliberations, the first respondent filed an affidavit mentioning that during the deliberations with the associations, the representatives of the trade unions did not agree for wage cut. They requested the RBI to waive the house loans availed by them, they also requested introduction of voluntary retirement scheme. The first respondent could not agree for those demands on the ground that it cannot afford to have the financial outflow to such an extent.

8. In the light of the rival contentions, the following are the points taken up for consideration:

1. Whether the first respondent bank which is registered under the A.P. Mutually Aided Cooperative Societies Act, 1995 being managed by a Special Officer and Person-in-Charge appointed by the Government of Andhra Pradesh is a “State” within the definition of Article 12 of the Constitution of India?
2. Whether the wage cut imposed by the first respondent in pursuance of the resolution of the implementation and monitoring committee of the second respondent is arbitrary, unreasonable and unsustainable?
3. Whether the percentage of the cut from the salary of the employees is detrimental to their interests and whether it is liable to be reduced to a reasonable extent?

Point No.1:

9. The first respondent bank is contending that since it is a society registered under the 1995 Act, it is neither financed nor controlled by the Government, therefore, it will not come within the definition of the “State” under Article 12 of the Constitution of India. Hence, the writ petition is not maintainable. The learned counsel for the first respondent bank in support of the above contention placed the following decisions of this Court and the Supreme Court:

10. In **V. Narasing Rao v. Prudential Co-op Urban Bank** a Division

Bench of this Court held that the respondent bank is not a statutory corporation, it is a Co-operative Society registered under the A.P.Cooperative Societies Act, 1964. Its capital is not contributed by the State. The control of the State over it is neither deep nor pervasive. The only control the State exercises is the one provided by the Act and the Rules made thereunder, which cannot be called deep and pervasive control. The respondent-bank is not an authority falling within the definition of "State" in Article 12. A Co-operative society does not satisfy the requirements of an 'authority'. Neither it exercises quasi-governmental, nor can its revenue be called public revenue. It cannot be said that the Board of Directors of the respondent Co-operative Bank is a body of persons of public character, nor can it be said their act is an act of Government. Therefore, the writ petition under Article 226 of the Constitution is not maintainable.

11. In **Sri Konaseema Co-op. Central Bank Ltd., v. N. Seetharama Raju** a Full Bench of this High Court held that the main object of the Co-operative Central Bank registered under the A.P. Cooperative Societies Act of raising funds to finance its members cannot be characterized as a "State" within the meaning of Article 12. The bye-laws which merely constitute terms of a contract between a society and its employees do not have or do not gain the force of law even where such a society can be characterized as State within the meaning of Article 12. Unless the functions of the bank are of public importance and closely related to governmental funds, it cannot be characterized as "State" within the meaning of Article 12.
12. In **SUM. Prasad v. A.P. State Federation of Co-operative Spinning Mills Ltd.**, a Full Bench of this High Court held that all the cooperative societies registered under the Co-operative Societies Act would not become a State within the meaning of Article 12 unless they are fully funded and controlled by the State. The question as to whether a society or corporation, including a cooperative society, is a State within the meaning of Article 12 of the Constitution of India or not, is essentially

a question of fact. Some societies may be State and some may not. A distinction can be laid down as between the co-operative societies, which are merely registered under the Cooperative Societies Act on the one hand and those cooperative societies although registered under the Cooperative Societies Act are fully funded and controlled by the State and conditions of service of its employees are governed by the statutory rules.

13. In **General Manager, Kisan Sahkari Chini Mills Ltd., v. Satrugan Nishad** the Supreme Court held that whenever there is a question whether a cooperative society is an instrumentality or agent of the Government, it has to be decided on the basis of the status of the body with respect to deep and pervasive control of the Government over the society or corporation.

14. In **Federal Bank Ltd., v. Sagar Thomas** the Supreme Court held that the six factors enumerated in **Ajay Hasia v. Khalid Mujib** have to be taken into consideration to test whether a body is an instrumentality or an agency of the State within the definition of Article 12 of the Constitution of India. The following are the six factors enumerated in **Ajay Hasia** (6 supra):

4. Whether the share capital of the bank is held by the Government;
5. Whether any financial assistance is provided by the State;
6. Whether it is an institution having State protection;
7. Whether the affairs of the bank are managed by the Board of Directors elected by its shareholders and whether no governmental agency or officer is connected with the affairs of the appellant bank or is any one of them a member of the Board of Directors? Whether in the normal functioning of the private banking company, there is any perspective or interference of the State or its authorities.
8. Whether the activities of the bank are falling in the category of discharging duties or functions of a public nature.
9. Whether the activity, which is being carried on by the bank is the one, which was earlier carried on by the Government and transferred to the bank.

15. In **Federal Bank Limited** (5 supra) the Supreme Court further held that the six factors enumerated in **Ajay Hasia** (6 supra) and approved in **Ramana Dayaram Shetty v. International Airport Authority of India** and **Pradeep Kumar Biswas v. Indian Institute of Chemical Biology** (seven Judge Bench) may be applied to the facts of a case to see whether those tests apply to the bank or not. The Supreme Court also held that even if it may be presumed that one or the other tests as provided in **Ajay Hasia** (6 supra) may be attracted, that by itself would not be sufficient to hold that it is an agency of the State or a company carrying on the functions of public nature. The Supreme Court while making the above observations referred to the observations made in para No.40 of the judgment in **Pradeep Kumar Biswas** (8 supra) and they read as follows:

40. The picture that ultimately emerges is that the tests formulated in **Ajay Hasia** are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

16. The Supreme Court also observed that one of the important factors to be considered is that if it is a statutory corporation, an instrumentality or an agency of the State or a company owned wholly or partially by a share capital floated from a public exchequer, it gives indicia that it is controlled by and under the authority of the appropriate government. It is this factor, which brings in the public element.

17. In **G. Bassi Reddy v. Industrial Crops Research Institute and another** the Supreme Court held that in order to test whether an organization is a State or authority under Article 12 of the Constitution, the tests laid down by the Constitution Bench in **Pradeep Kumar Biswas** (8 supra) have to be applied.

18. The petitioners are contending that though the bank was registered as a society under the 1995 Act, after the liquidation of the bank, the Special Officer and person-in-charge appointed by the Government of Andhra Pradesh is managing the affairs of the bank, hence it comes within the definition of Article 12 of the Constitution. The learned counsel for the petitioners relied on the judgments of the Supreme Court in support of their contention that since a Special Officer and person-in-charge is managing the affairs of the society, it comes within the definition of the State.
19. In **Gayatri De v. Mousumi Cooperative Housing Society Ltd.**, the Supreme Court held that in a case where the cooperative society is under the control of a Special Officer, a writ would lie. It was further held that the Special Officer appointed under the provisions of the Cooperative Societies Act is a statutory authority, therefore, where the subject matter of writ is an order passed by the Special Officer in discharge of his statutory functions, the writ petition is maintainable.
20. In the case covered by the above decision a Special Officer was appointed by the High Court to discharge the functions of the Society, therefore, the Supreme Court held that he should be regarded as a public authority and hence the writ petition is maintainable.
21. The above judgments of the Supreme Court are making the position clear that a cooperative society can be brought under the definition of the State under Article 12 of the Constitution of India when a society is run with the share capital of the Government or financial assistance of the State, when the affairs of the society are managed by the governmental agency or an officer, and when there are statutes regulating the financial and commercial activities of the society.
22. It is an undisputed fact that in the case on hand the affairs of the first respondent are being managed by the person-in-charge who is an IAS Officer designated as a Special Officer/Administrator. In the light of the decisions rendered by the Supreme Court, it can be safely concluded that

the first respondent—bank is a State within the definition of Article 12 of the Constitution of India.

Point No.2:

23. The petitioners are contending that the first respondent arbitrarily imposed the wage cut in pursuance of the resolution of the implementation and monitoring committee; therefore, the impugned action of the first respondent imposing wage cut is contrary to the directions of the Reserve Bank of India.

24. When the first respondent—bank went in liquidation, the Reserve Bank of India through the proceedings dated 21-3-2003 issued certain directions in exercise of the powers vested in it under sub-section (1) of Section 35-A of the Banking Regulation Act, 1949 (as applicable to cooperative societies) read with Section 56 of the Banking Regulation Act, 1949. The following are the directions issued by the Reserve Bank of India:

The bank shall not, without prior approval in writing from the Reserve Bank of India, grant or renew any loans and advances, make any investment, incur any liability including, borrowal of funds and acceptance of fresh deposits, disbursing or agreeing to disburse any payment whether in discharge of its liabilities and obligations or otherwise, transfer or otherwise dispose of any of its properties or assets except the extent and in the manner of provided:

- i. A sum not exceeding Rs.1,000/- of savings or current account or any other deposit account may be allowed to be withdrawn by the depositor;
- ii. On maturity, renewal of existing term deposits may be allowed in the same name and capacity;
- iii. to enter into compromise regarding non-performing assets keeping in view the parameters set out in the circular dated 12-2-2003;
- iv. payment of drafts, pay orders or any cheques issued by the bank and remaining unpaid on the date on which the directives came into force;
- v. payment of bills received for collection on or before 21-3-

2003 and realized before, on or after that date may be allowed;

- vi. to incur the expenditure that may be required to meet the salaries of employees, rent, rates and taxes, electricity bills, printing, stationery etc., postage and telegram etc., legal expenses not exceeding Rs.3,000/- in each case;

...

25. The first respondent—bank issued a circular on 26-7-2004 informing that the bank has accumulated losses to a tune of Rs.186 crores. It is not in a position to repay the legal dues to various depositors. The bank has been functioning under the directives of the RBI, which hampered its normal banking activities. The banking transactions have come to a grinding halt. The bank has imposed many costs cut measures in a bid to rehabilitate itself to administrative and other expenses. The bank closed seven branches and the employees of those branches have been rehabilitated in other branches to ensure that they are not deprived of their employment. Despite all the above measures, the bank received directives from the Government of Andhra Pradesh to further reduce the staff by curtailing the expenditure. In the interest of the bank, as a first step, the bank introduced the wage cut to the officers of the level of Assistant General Managers at 40%, Senior Officers at 35% and Junior Officers at 33.33%.

26. After considering the material available on record and the sequence of events, it is crystal clear that the first respondent bank went in liquidation. There is lot of financial crisis in the bank. The funds available with the society are being spent on salaries of the staff members. Therefore, it became inevitable for the first respondent to impose wage cut which is one of the measures in compliance of the directions given by the Reserve Bank of India that the bank shall minimize the establishment charges.

27. The Government of Andhra Pradesh appointed a monitoring and

implementation committee to look into the affairs of the first respondent bank. As per the minutes of the said committee, the salaries and other allowances were reduced. There is not much reduction in the staff. The monthly establishment bill is about Rs.39.90 lakhs. There is no sacrifice in terms of wage reduction from the members of the staff. The need of the hour is to reduce the staff expenses to the barest minimum to help the depositors. The first respondent is in financial crisis. The petitioners are also not disputing the said fact. Their only grievance is that if the wage cut as per the percentage recommended by the implementation committee is applied, many of them will not get any amount or get a paltry amount; therefore, it becomes very difficult for them to maintain their families and to do the work. Though the petitioners pleaded that there shall not be any wage cut, they are conceding that they have to contribute their might to reduce the establishment charges and to adjust with the salary that is going to be paid after implementation of the wage cut. The learned counsel for the first respondent submitted that deliberations were held before imposing the wage cut, but the petitioners came forward with several demands, which cannot be implemented.

28. The petitioners did not mention whether there is any provision taking away the powers of the management to act according to the situation. The petitioners are conceding that they have to sacrifice a part of their wages; but they are not prepared to agree for the wage cut to a tune of 40%. As seen from the salary slips of the officers filed by the petitioners, most of them are getting a reasonable amount, which may be just sufficient to meet the expenses of the family. There are few employees who are getting few hundreds of rupees after wage cut. The pay slips indicate that most of the employees have taken loans for construction of houses, purchase of vehicles and other loans. Though the deductions are towards loan taken for acquiring properties, it is likely to take sometime for discharge of those loans to enable the petitioners to get substantial amount towards wages for the maintenance of the family. Therefore, it cannot be said that the wage cut is arbitrary, illegal or violative of any of the provisions of the Cooperative Societies Act. I

therefore hold that the wage cut imposed by the first respondent in pursuance of the resolution of the implementation committee is valid and is an essential measure on account of the financial crisis of the bank and it cannot be said to be illegal, arbitrary or unreasonable.

Point No.3:

29. The first respondent imposed wage cut at 40% to the officers of the cadre of Assistant General Managers, 35% against the Senior Officers and 33.33% cut from the salaries of the Junior Officers. The learned counsel for the petitioners submitted that the petitioners are prepared to accept the wage cut to a tune of 10%, but they cannot agree to the wage cut imposed by the first respondent as indicated above.
30. The first respondent being in the financial crisis ought to have alerted the petitioners and other employees to prepare mentally for the wage cut and ought to have imposed the wage cut in a phased manner to acclimatize the officers and the employees to adjust with the limited resources, but when the first respondent took a decision suddenly to reduce the salary to a tune of 40%, it will be generally a shocking news to the employees who live only on wages. The first respondent instead of imposing 40% wage cut at a time ought to have started the cut with a reasonable percentage and should have watched the progress from time to time to act according to the situation and ought to have imposed such cuts as the situation warrants. Unless the petitioners also strengthen the hands of the first respondent by conceding the wage cut to a reasonable extent, there is every likelihood of threat to their jobs and it may lead to winding up of the bank once for all. Keeping in view the financial crisis of the bank, the recommendations of the monitoring and implementation committee, and the directives from the Reserve Bank of India, an inevitable situation has arisen leading to wage cut of the petitioners and other employees, but, at the same time, the problem of maintenance of the families of the petitioners should also be taken into consideration while imposing such cut. In the light of the circumstances mentioned above, I

hold that the wage cut @ 40%, 35% and 33.33% to the cadre of Assistant General Managers, Senior Officers and Junior Officers of the bank is excessive. Keeping in view the affairs of the first respondent, the recommendations of the monitoring and implementation committee, I am of the view that the interests of all the parties would be protected by striking a balance if the wage cut is uniformly imposed at the rate of 25% to the Assistant General Managers and Senior Officers of the bank and accordingly the first respondent is at liberty to apply the uniform rate of wage cut to the cadre of Assistant General Managers and Senior Officers. Likewise, I am of the view that imposition of 20% wage cut to the cadre of the Junior Officers would be just and proper in the facts and circumstances of the case.

31. In the light of the foregoing observations, the order of the first respondent dated 26-7-2004 is modified by reducing 40% and 35% wage cut imposed on the Assistant General Managers and Senior Officers respectively to 25%. The 33.33% wage cut imposed on the Junior Officers is reduced to 20%. The first respondent is at liberty to change the percentage after six months from the date of this order, either reducing or increasing the wage cut, depending upon the financial position of the bank as on that date. The writ petition is accordingly disposed of directing the first respondent to implement the modified rate of wage cut for the wages from September 2004.

(Dr.G.YETHIRAJULU, J)

24th September 2004

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman, Prudential Cooperative Bank Ltd. 8-1-381, Rashtrapati Road, Secunderabad..
2. The Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad.
3. The Government Pleader for Cooperation.
4. 2 CD copies.